

ESTTA Tracking number: **ESTTA51986**

Filing date: **11/04/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	92044876
<b>Party</b>	Plaintiff PRINTING TECHNOLOGY, INC.  ,
<b>Correspondence Address</b>	ALAN I. CYRLIN WASSERMAN, COMDEN CASSELMAN & PEARSON, LLP 5567 RESEDA BLVD., SUITE 330 TARZANA, CA 91357  acyrlin@wccplaw.com
<b>Submission</b>	Request for Extension of Time to File Opposition and Opposition to Motion to Suspend Proceedings.
<b>Filer's Name</b>	Alan I. Cyrlin
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<b>Signature</b>	/aic/
<b>Date</b>	11/04/2005
<b>Attachments</b>	Scan001o.pdf ( 2 pages )

Respondent did not serve its Motion to Suspend on Petitioner's counsel. Although Respondent claims that the Motion was mailed-served on October 19, 2005, Petitioner's counsel did not receive it. Petitioner's counsel only became aware of the Motion on November 4, 2005 when he received Respondent's Exhibit (a copy of Respondent's federal complaint). The Exhibit was served on November 1, 2005.

When Petitioner reviewed the Exhibit, he reviewed the filings on the USPTO website on November 4, 2005. Only then, was he able to review Respondent's Motion to Suspend.

Accordingly, Petitioner requests an extension of time until November 19, 2005 in which to file an opposition to the Motion.

In the event that the requested extension of time is not granted, Petitioner submits the following brief reply to the Motion to Suspend:

Contrary to Respondent's contention, this proceeding should not be suspended. The resolution of the federal lawsuit will not resolve all issues in the present cancellation proceeding. This proceeding concerns the issue of whether Respondent's registration for the mark CHOOSE QUALITY is valid. The issue in the federal action is whether Petitioner has infringed on the mark. A court may find that there has been no infringement, even if the mark is valid. This is so for several reasons. For example, there may not be any infringement if Petitioner used CHOOSE QUALITY solely in a non-trademark sense. Nevertheless, even if Petitioner prevails in the federal lawsuit, it will still be damaged by the registration. Moreover, several affirmative

defenses exist which would defeat Respondent's infringement claim (e.g., waiver, estoppel, statute of limitations) which would not be applicable in this cancellation proceeding.

Additionally, Respondent is suing Petitioner not only for infringement on the registration, but also alleged infringement on Petitioner's common law rights. Thus, the resolution of the federal lawsuit will not necessarily resolve all issues in the present cancellation proceedings. Finally, the test for the validity of a trademark and registration are different in a cancellation proceeding than in a lawsuit for infringement brought in federal court.